
OLR Bill Analysis

SB 454

AN ACT INCREASING THE TRANSPARENCY OF GENERAL BIDS FOR STATE CONTRACTS.

SUMMARY:

This bill makes several changes concerning the awarding of subcontracts for public works projects subject to the state's competitive bidding laws. It requires a general bidder to separately list subcontractor names and prices for any class of work expected to cost more than \$25,000 and for which the Department of Administrative Services (DAS) has a prequalification classification. It also (1) limits the circumstances under which a subcontractor may subcontract work that it is awarded and (2) allows an awarding authority to require a subcontractor to perform a minimum percentage of the work with its own forces.

The bill applies the above requirements concerning the listing of subcontractor names and prices to DAS projects that use the construction manager at-risk (CMR) delivery method (see BACKGROUND). It also requires (1) CMRs, within five days of being awarded a contract, to present a subcontract to each subcontractor listed and (2) the subcontractors to execute an agreement within five business days.

The bill also expands the (1) parties that must keep certified payroll records on prevailing wage jobs and (2) information that must be included in the employer-signed certification statement that accompanies these records. It also allows the certified payrolls and related information to be submitted to the contracting agency's agent, instead of the contracting agency itself.

Finally, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014

§§ 2 & 3 — SUBCONTRACTOR BIDS AND AWARDS

The bill requires a general bidder to separately list in the bid the cost of any class of work (and name the subcontractor that will perform the work) on a contract's plans and specifications if (1) DAS has a prequalification classification for that work and (2) the cost is expected to exceed \$25,000. Under current law, the listing requirement (and \$25,000 threshold) applies only to masonry; electrical; mechanical; heating, ventilation, and air conditioning; and any other classes deemed necessary or convenient by the awarding authority. Under DAS regulations, there are 34 subcontractor prequalification classifications (Conn. Agencies Reg., § 4a-100-2(g)).

By law, with certain exceptions, a subcontractor named in the general bid must install all materials for work that it is awarded and that are required by the project's specifications. The bill specifies that the subcontractor must use its own work force to do this. It prohibits a subcontractor from subcontracting any portion of work that it is awarded unless (1) the "sub-subcontractor's" bid price was included in the original bid and (2) the original subcontractor files, with the awarding authority or its agent, a copy of a fully executed subcontract with the sub-subcontractor in addition to the original subcontractor's fully executed subcontract. The bill allows an awarding authority to require a subcontractor to perform a minimum percentage of the work with its own forces.

By law, a general bid for a project subject to competitive bidding requirements must be submitted on a form furnished by the awarding authority. Among other things, the form requires the bidder to agree that it will execute a contract within five business days after the awarding authority presents it. The bill requires the bidder to also agree to do this if selected as a subcontractor. It also specifies that, in this context, "awarding authority" includes anyone acting on behalf of or as an agent of the contracting agency. Because the form is submitted by general bidders, the subcontractor's role in this process is unclear.

§§ 5 & 6 — CONSTRUCTION MANAGER AT-RISK PROJECTS

By law, a general bidder awarded a general contract by the

awarding authority must, within five days, present a subcontract to each subcontractor listed on the general bid. The subcontractor must execute an agreement, using a standard form specified in statute, within five business days after being presented with the subcontract. The bill (1) applies these requirements to CMR projects and (2) specifies that, in this context, “awarding authority” includes anyone acting on behalf of, or as an agent of, the contracting agency. It also requires a CMR project’s elements for bidding purposes (i.e., the “trades packages”) to separately list any class of work for which DAS has a prequalification classification.

By law, the DAS commissioner must approve the trade contractor bids for a CMR project, but current law does not specify (1) the form of the subcontracts or (2) how to determine which trade packages to include in the project. In practice, the CMR uses its own subcontract forms and determines which trade packages to include.

§ 7 – PREVAILING WAGE CERTIFIED PAYROLL RECORDS

The bill expands the (1) parties that must keep certified payroll records on prevailing wage jobs and (2) information that must be included in the employer-signed certification statement that accompanies these records. It also allows the certified payrolls and information to be submitted to the contracting agency’s agent, instead of the contracting agency. The bill specifies that a contracting agency’s agent can rely on a lower-tier subcontractor’s payroll certification, as long as the agent does not know the subcontractor’s certification is false. (As neither the law nor the bill requires the agent to certify payroll records, the effect of this provision is unclear.)

Payroll Record Keeping

Current law requires employers (i.e., construction contractors) on prevailing wage jobs to (1) keep, maintain, and preserve their employees’ payroll records and (2) submit them monthly to the state or local agency that contracted for the work. The bill requires the contracting agency to do the same for these records and allows them to be submitted to the contracting agency’s agent. (Presumably, the contracting agency would not prepare these records, since it does not

directly oversee the contractor's employees or their payroll, but it would keep them and could submit them to its agent.) By law, unchanged by the bill, failing to file a certified payroll (or filing one that is false) is a class D felony for which an employer (but not a contracting agency) can be fined up to \$5,000, imprisoned for five years, or both.

Payroll Certification

When submitting the above payroll records to a contracting agency, current law requires an employer to include an original statement signed by the employer indicating, among other things, that (1) the employer has met the prevailing wage law's requirements, (2) each person on the job is covered by a workers' compensation insurance policy, and (3) the employer understands that knowingly filing a false certified payroll is a class D felony. The bill requires the employer-signed statement to also indicate that the (1) contracting agency's agents have met the prevailing wage law's requirements and (2) worker's compensation insurance coverage for each person is for that person's proper occupational classification. It is unclear how an employer would know if the contracting agency's agents have met the prevailing wage law's requirements (see COMMENT).

BACKGROUND

CMR Projects

In a CMR project, the owner (e.g., DAS) hires a firm with construction experience (the construction manager or "CM"), usually during a project's design phase, to manage the entire construction process. The CM provides pre-construction services such as estimating costs, budgeting, reviewing constructability and suggesting construction alternatives, and scheduling. Once the design is finalized, the CM seeks competitive bids from subcontractors for each project element (e.g., electrical, mechanical, carpentry, roofing). Once the subcontractors' bids are received and verified for compliance with project requirements, scope, and specifications, the CM and the project owner negotiate and set a guaranteed maximum price (GMP) for construction. The CM assumes the risk to complete the project within

the GMP.

The GMP includes the CM's fee, the cost of the work, and contingency funds for the project. The CM is responsible for costs that exceed the GMP, excluding any work not included in the final GMP that the owner authorizes through a change order process.

COMMENT

Certified Payrolls

The bill requires employers on prevailing wage jobs to sign a certified payroll statement indicating that the contracting agency's agents have complied with the prevailing wage laws' requirements. However it is unclear how an employer would know about the agent's compliance. By law, it is a D felony for an employer to fail to file a certified payroll or intentionally make a false written statement on it.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 11 Nay 3 (03/24/2014)